



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2014-0250; FRL-9945-91-Region 4]

Air Plan Approval; Removal of I/M Program in Memphis and Revisions to the 1997 8-Hour Ozone Maintenance Plan for Shelby County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State of Tennessee's May 23, 2014, State Implementation Plan (SIP) revision, submitted through the Tennessee Department of Environment and Conservation (TDEC) on behalf of the Shelby County Health Department (SCHD), seeking to modify the SIP by removing the Inspection and Maintenance (I/M) program in the City of Memphis, Tennessee, and by incorporating Shelby County's revised maintenance plan for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Among other things, the revised maintenance plan updates the emissions inventory estimates and the motor vehicle emissions budgets (MVEBs) for the years 2006 and 2021, and contains an emissions reduction measure to offset the emissions increase expected from the termination of City of Memphis I/M program. EPA has determined that Tennessee's May 23, 2014, SIP revision is consistent with the applicable provisions of the Clean Air Act (CAA or Act).

DATES: This rule is effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2014-0250. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Wong can be reached by phone at (404) 562-8726 or via electronic mail at wong.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Shelby County was designated as nonattainment for the carbon monoxide (CO) NAAQS on March 3, 1978 (43 FR 8962). Local transportation sources in the City of Memphis were identified as the prime contributors to monitored CO violations in Shelby County at that time. The City of Memphis I/M program was adopted as a control strategy to attain the CO NAAQS.

On July 26, 1994 (59 FR 37939), EPA redesignated Shelby County to attainment for the CO standard and approved the initial 10-year CO maintenance plan for Shelby County. Subsequently, further improvements in automotive technology led to a consistent reduction in locally monitored levels of CO. On October 25, 2006 (71 FR 62384), EPA approved the required second 10-year CO maintenance plan which demonstrated that I/M was no longer needed to maintain the CO NAAQS.

On April 30, 2004 (69 FR 23858), EPA designated Shelby County, Tennessee, and Crittenden County, Arkansas, as nonattainment for the 1997 8-hour ozone NAAQS, with a classification of ‘moderate’ (hereinafter collectively referred to as the “Memphis 1997 8-hour Ozone Area”).¹ Under CAA section 182(b)(4), moderate ozone nonattainment areas with a census-defined urbanized area population over a given threshold are required to adopt basic I/M as part of the required SIP.

¹ On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million. *See* 73 FR 16436 (March 27, 2008). EPA designated Shelby County; Crittenden County, Arkansas; and a portion of Desoto County, Mississippi, as a marginal nonattainment area for the 2008 8-hour ozone NAAQS on April 30, 2012 (effective July 20, 2012). *See* 77 FR 30088 (May 21, 2012). Currently, monitoring data for the Memphis 2008 8-hour Ozone Area indicates that the Area has attaining data for the 2008 8-hour ozone NAAQS. As noted above, marginal ozone nonattainment areas are not required to adopt an I/M program.

Following the initial designations for the 1997 8-hour ozone standard, Shelby County, the State of Tennessee, Crittenden County, and the State of Arkansas adopted additional measures to control ozone-forming emissions in the region and petitioned EPA to use its discretion under CAA section 181(a)(4) to reclassify the Area from moderate to marginal. On September 22, 2004 (69 FR 56697), EPA granted the petition to reclassify the Area, which removed the SIP planning requirements mandated of moderate ozone nonattainment areas, including the adoption of a mandatory I/M program, and reset the attainment deadline to June 15, 2007. The Area failed to attain the 1997 8-hour ozone NAAQS by the marginal area attainment deadline.

Consequently, on March 28, 2008 (73 FR 16547), EPA reclassified the Area as a moderate nonattainment area. This reclassification reset the attainment deadline to June 15, 2010, with an attainment plan SIP revision due on March 1, 2009, to address all CAA requirements for a moderate ozone nonattainment area, including an I/M program in Shelby County pursuant to CAA section 184(b)(4).

The end of the 2008 ozone monitoring season resulted in a design value for the Memphis 1997 8-hour Ozone Area that met the NAAQS. Tennessee, Mississippi, and Arkansas prepared separate, but coordinated, redesignation requests and maintenance plans for their respective portions of the Area. Tennessee, on behalf of Shelby County, submitted the redesignation request and maintenance plan for its portion of the 1997 8-hour Ozone Area to EPA on February 26, 2009, prior to the attainment plan SIP revision due date.

EPA approved Tennessee's redesignation request and maintenance plan on January 4, 2010 (75 FR 56). Although there was no longer a mandatory requirement to implement I/M in Shelby County under section 184(b)(4) of the CAA, the City of Memphis continued to operate its

I/M program, and the SIP-approved maintenance plan for the 1997 8-hour ozone NAAQS includes the implementation of a basic I/M program in Shelby County as a contingency measure in the event that the 1997 8-hour ozone NAAQS is violated in the 1997 8-hour Ozone Area after redesignation. In mid-2012, the Memphis City Council voted to defund the City of Memphis I/M program beginning with Fiscal Year 2013/2014. Vehicle inspection operations at all four City of Memphis inspection stations ended on June 28, 2013. Tennessee's May 23, 2014, SIP submission addresses the termination of this program.

In a notice of proposed rulemaking (NPRM) published on February 12, 2016 (81 FR 7483), EPA proposed to approve the May 23, 2014, SIP revision. No comments were received on the February 12, 2012, NPRM. The details of Tennessee's submittal and the rationale for EPA's actions are further explained in the NPRM.

II. Revised MVEBs

Tennessee's May 23, 2014, maintenance plan revision updates the MVEBs for 2006 and 2021 using on-road mobile source emissions estimates from MOVES and removes the MVEBs for 2009 and 2017. The revised 2021 MVEB accounts for the termination of the I/M program and the shutdown of the Cleo, Inc. facility.² These budgets are used by transportation authorities to assure that transportation plans, programs, and projects are consistent with, and conform to, the maintenance of acceptable air quality in the Memphis 1997 8-hour Ozone Area.

² As discussed in the NPRM, the maintenance plan revision includes emissions reductions from the closure of the Cleo, Inc. facility to offset the estimated increase in emissions due to the termination of the City of Memphis I/M program. The Cleo facility was a gift wrap manufacturing plant and warehouse located at 4025 Viscount Avenue, Memphis, Tennessee.

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must “conform” to (i.e., be consistent with) the part of the state’s air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstration) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area’s planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993 (58 FR 62188), Transportation

Conformity Rule. The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

According to 40 CFR 93.118, a maintenance plan must establish MVEBs for the last year of the maintenance plan (in this case, 2021). The updated MVEBs in the revised maintenance plan for the 1997 8-hour ozone NAAQS are for the base year (2006) and the last year of the first 10-year maintenance plan (2021). The 2021 MVEB reflects the total on-road mobile source emissions for 2021 plus an allocation from the available volatile organic compounds (VOC) and nitrogen oxides (NO_x) safety margins.³ The MVEBs are presented in Table 1, below.

**Table 1 – Shelby County VOC and NO_x MVEBs
(Ozone season tons per day)**

	2006	2021
NO _x	58.013	56.428
VOC	23.986	12.782

The previously-approved 1997 8-hour ozone maintenance plan for Shelby County contained interim MVEBs for years 2006, 2009, and 2017 in addition to the required maintenance year MVEB of 2021. The consensus formed during the interagency consultation process was that MVEBs should only be set for 2006 and 2021.⁴ Therefore, the revised maintenance plan removes the interim budgets for years 2009 and 2017.

³ The safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As discussed in the NPRM, Shelby County chose to allocate 4.224 tpd of the available VOC safety margin and 40.393 tpd of the available NO_x safety margin to the 2021 MVEBs.

⁴ The transportation conformity provisions of the CAA require interagency consultation in the development of MVEBs. The consultation process involves federal agencies (EPA, Federal Highway Administration, and Federal Transit Administration), state and local transportation agencies, state and local air agencies, and metropolitan planning organizations.

III. Final Action

EPA is approving Tennessee's May 23, 2014, SIP revision seeking to remove the City of Memphis I/M program from the SIP and to incorporate Shelby County's revised maintenance plan for the 1997 8-hour ozone NAAQS into the SIP.⁵ The maintenance plan includes, among other things, an emissions reduction measure to offset the emissions increase expected from the termination of City of Memphis I/M program as well as revised emission inventory estimates and revised 2006 and 2021 MVEBs based upon new modeling associated with the termination of the I/M program and the inclusion of the offset measure. Within 24 months from this final rule, the transportation partners will need to demonstrate conformity to the new NO_x and VOC MVEBs pursuant to 40 CFR 93.104(e)(3).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

⁵ The contingency measures portion of Shelby County's maintenance plan for the 1997 8-hour ozone NAAQS, as incorporated into the SIP, includes the implementation of an I/M program in Shelby County as a contingency measure should a monitored violation of the 1997 8-hour ozone NAAQS occur in the former Memphis, TN-AR nonattainment area. Today's final action does not remove the I/M program from the contingency measures in the SIP-approved maintenance plan.

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 20, 2016.

Heather McTeer Toney
Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart RR - Tennessee

2. Section 52.2220(e), is amended by adding an entry for “8-Hour Ozone Maintenance plan for the Shelby County, Tennessee Area” at the end of the table to read as follows:

§52.2220 Identification of plan.

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(e) * * *

EPA-Approved Tennessee Non-Regulatory Provisions

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
**	**	*	*	*
Revised 8-Hour Ozone Maintenance plan for the Shelby County, Tennessee Area	Memphis, Shelby County	5/14/2014	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Revises the maintenance plan approved by EPA on 1/4/10 to include a revised emissions inventory, revised MVEBs, and an emissions reduction measure to offset the termination of the City of Memphis I/M program

[FR Doc. 2016-10166 Filed: 4/28/2016 8:45 am; Publication Date: 4/29/2016]